

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MAMIE STEPHENS and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION HOSPITAL, Bronx, N.Y.

*Docket No. 96-1983; Submitted on the Record;
Issued October 9, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs abused its discretion in refusing to reopen appellant's case for a merit review.

The Board has duly reviewed the case record in this appeal and finds that the Office did not abuse its discretion in refusing to reopen appellant's case for a merit review.

The only decision before the Board on this appeal is the Office's October 10, 1995 decision denying appellant's request for a review on the merits of its November 30, 1994 decision which denied appellant's request for reconsideration without a review of the merits of the claim.¹ Because more than one year has elapsed between the issuance of the Office's November 30, 1994 decision and June 11, 1996, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the November 30, 1994 decision.²

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,³ the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a point of law or a fact not previously considered by the Office; or (3) submit relevant and pertinent

¹ In its November 30, 1994 decision, the Office denied appellant's request for reconsideration of its August 10, 1994 decision without a merit review on the grounds that the evidence submitted was duplicative, and thus insufficient to warrant a review of its prior decision. In its August 10, 1994 decision, the Office denied appellant's request for modification of a hearing representative's November 1, 1993 decision finding that appellant did not sustain any continuing disability after September 9, 1992 causally related to her July 17, 1971 employment-related back strain and low back syndrome based on a merit review of the claim.

² 20 C.F.R. § 501.3(d)(2).

³ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

evidence not previously considered by the Office.⁴ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.⁵ When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.⁶

In support of her request for reconsideration, appellant submitted an August 2, 1995 medical report of Dr. David M. Myers, a Board-certified orthopedic surgeon. In this report, Dr. Myers stated that his comments were in response to the Office's request for a detailed explanation of his opinions rendered in an April 24, 1994 medical report.⁷ Dr. Myers indicated a review of medical records and stated:

"The diagnosis is chronic repetitive stress syndrome of the lumbar spine which was leading to an eventual progressive deterioration of the herniated disc at L5-S1 followed by a subligamentous herniated disc excision on October 8, 1990, with permanent and chronic myosistis and fibromyositis of the lumbar spine with left lumbar radiculopathy plus left total hip arthroplasty secondary to traumatic aseptic necrosis of the left hip with the permanent limitations as noted."

Dr. Myers opined:

"It is my impression, based on the information just noted, that there is no question regarding causal relationship dating back to [appellant's] earliest treatment, which is well documented in the records of the U.S. Public Health Care Facility, as well [as] the records from the Staten Island Hospital Clinic. This historical data quite clearly indicates that this patient had suffered an injury dating back to July 1971, and being well followed since that date to the present, therefore establishing the direct line of causal relationship and the subsequent negative effect that it has on this patient's medical history, as well as her diminished lifestyle."

While Dr. Myers' August 2, 1995 medical report is now in the record, he merely repeated diagnoses and opinions contained in his April 28, 1994 medical report which was previously considered by the Office. In addition, Dr. Myers failed to provide any medical rationale for his opinion that appellant's conditions were caused by the July 17, 1991 employment injury. Rather, Dr. Myers merely noted a history of appellant's medical treatment since the July 17, 1991 employment injury. Causal relationship is a medical issue and the evidence required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a reasoned medical opinion that supports a causal connection between her disabling condition

⁴ 20 C.F.R. §§ 10.138(b)(1)-(2).

⁵ *Id.* at. § 10.138(b)(2).

⁶ *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

⁷ The Board notes that contrary to Dr. Myers' statement that he rendered opinions in an April 24, 1994 medical report, the record does not reveal such a report. The record, however, reveals an April 28, 1994 from Dr. Myers indicating that appellant's conditions were caused by the July 17, 1971 employment injury.

and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury, and must explain from a medical perspective how the disabling condition is related to the injury.⁸ Consequently, the evidence submitted by appellant did not meet the requirements set forth in 20 C.F.R. § 10.138.

Appellant has neither attempted to show that the Office erroneously applied or interpreted a point of law, nor has she attempted to advance a point of law or a fact not previously considered by the Office. Because appellant has failed to meet at least one of the three requirements for obtaining a merit review of her claim, the Board finds that the Office properly denied a merit review of her case.

The October 10, 1995 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
October 9, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

⁸ *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).